IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
APPEAL FROM ORDER NO.493 OF 2005

Shri Shankar Eknath Bhande
@ Mang & anr. Appellants

Vs.

Shri Subhash Dattaraya Chandere & anr. Respondents

Mr.S.J.Rairkar for appellants.

CORAM: B.H.MARLAPALLE,J.

June 06, 2005.

P.C.

1. Heard Mr.Rairkar, learned counsel for the appellants who have been impleaded as defendants in Special Civil Suit No.1098 of 2004. The application for temporary injunction filed at Exhibit 5 has been allowed by the trial Court by the impugned order dated 6/1/2005 and the defendants have been restrained from creating any third party interest on the suit property in any manner till the disposal of the suit.

2. Admittedly the suit property is agricultural land from Survey No.47 of village Baner, Taluka Haveli, Dist. Pune and admeasuring about 1 Hectare and 11 Ares from total plot area admeasuring 9 Acres and 11 Ares. The respondents-plaintiffs contend that by agreement for sale dated 21/6/1991 late Eknath Janu Bhande, the owner of the land had sold the suit land to the plaintiffs and the consideration amount was paid to him by way of cheques.

Whereas the defendant no.1 contended that Eknath Bhande who died on 17/9/1997 had executed agreement for sale in favour of defendant no.2 on 14/10/1996 in respect of the suit land for consideration of Rs.80 lacs and, therefore, the plaintiffs' plea for temporary injunction was not required to be entertained. It was also contended by the defendants that the suit was filed beyond limitation or belatedly and that was an additional reason to oppose the application for temporary injunction.

3. It has been noted by the trial Court that the suit land was ancestral property of Bhande family and from the total area of 9 Acres and 11 Ares late Eknath, who was the father of defendant no.1, was to get half share on partition in RCS Suit No.2382 of 1987. The performance of agreement for sale dated 21/6/1991 was thus subject to the decision in the said civil suit. From the said Civil Suit Second Appeal No. 84 of 2000 was filed and it was compromised on 10/3/2003. As per the terms of the agreement dated 21/6/1991 the plaintiffs did not get the possession of the suit land and the defendant no.1 did not take steps to honour the said agreement. The suit was filed for specific performance of the said agreement dated 21/6/1991.

4. On the basis of the passbooks of Cosmos Bank and United Western Bank the trial Court noted that defendant no.2 had released payment of Rs.12,09,000/- and at the same time the father of defendant no.1 had received an amount of

Rs.2,50,000/- from the plaintiffs towards the part consideration under the agreement dated 21/6/1991. The transaction between Eknath Bhande and the plaintiffs was earlier in point of time than the transaction with defendant no.2. It was under these circumstances that the trial Court noted that the suit property was required to be protected from any further alienations till the title of the respective parties i.e. the plaintiffs and the defendants is decided in respect of the suit plot. The issue of delay does not come in the way of the plaintiffs in view of the explanation furnished in para 12 of the plaint at least at this stage and, therefore, challenge to the impugned order on that ground is unsustainable.

5. The reasoning given by the trial Court in respect of the impugned order does not suffer from any errors and, therefore, there is no case made out to interfere with the same. This appeal, therefore, fails and the same is hereby dismissed in limine. However, the trial of the suit is hereby expedited.

(B.H.MARLAPALLE,J.)